

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS

Plaintiff

v.

CARDIAC SCIENCE, INC.

Defendants

Civil Action: 04-30126-MAP

**DEFENDANT COMPLIENT CORPORATION'S
REPLY BRIEF IN SUPPORT OF MOTION TO REMAND**

In opposition to Complient's Motion to Remand, Hutchins claims that the Motion to Remand is untimely. Hutchins claims that Local Rule 7.1 proscribed a 14-day period of time to file Complient's Motion to Remand. This argument is incorrect. Local Rule 7.1 pertains to memoranda in opposition to motions filed by a party and does not govern the time for filing an affirmative motion. Instead, 28 U.S.C. Section 1447, provides that a party has 30 days from the filing of a Notice of Removal to file a Motion to Remand.

Hutchins claims that the time for Complient's Motion to Remand began to run as of the filing of his improper "Motion for Removal." At the January 4, 2006 hearing, counsel for Complient argued on the record, contrary to Hutchins' assertion, in opposition to his "Motion for Removal." At the January 4, 2006 hearing, the Court explained that, among other things, that a motion is not the proper vehicle by which to remove a case from state to federal court. Thereafter, on January 5, 2006, Hutchins filed his alleged "Amended" Notice of Removal (which was not amended at all). Amended or not, Complient's time to file a Motion to Remand did not

begin to run until January 6, 2006 and, further, did not lapse until February 6, 2006. Accordingly, Compliant's Motion to Remand, filed on January 30, 2006 is, indeed, timely. Compliant respectfully requests that it be granted.

Respectfully submitted,

/s/ John J. Egan

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CERTIFICATE OF SERVICE

A copy of the foregoing Defendant Compliant Corporation's Reply Brief in Support of Motion to Remand is being served by operation of the Court's electronic filing system and First Class United States Mail this 17th day of February, 2006, upon:

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